

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**TIMOTHY ACTON, Administrator
of the Estate of MATTHEW ACTON,**

Plaintiff,

v.

EXCEL INDUSTRIES, INC.,

Defendant.

Case No. 2:08-cv-315

JUDGE GREGORY L. FROST

Magistrate Judge Terence P. Kemp

OPINION AND ORDER

This matter is before the Court for consideration of Defendant's June 17, 2009 motion to bifurcate. (Doc. # 65.) Defendant requests this Court to bifurcate liability from damages, or in the alternative, bifurcate the punitive damages claim in this litigation so that the jury will address the compensatory damages issue in the initial stage of trial followed, if necessary, by the punitive damages issue in the second stage of trial. For the alternate request, Defendants cite to Ohio Rev. Code § 2315.21(B)(1). Plaintiff has not filed a memorandum in opposition to the motion, and the filing deadline has passed.

The Court **DENIES** the motion with respect to the bifurcation of liability and damages and **GRANTS** the motion with respect to the alternate request for bifurcation of punitive damages from liability and compensatory damages. *See* Ohio Rev. Code § 2315.21(B)(1); *Smith v. Glaxo Welcome, Inc.*, No. C-1-96-540, 1998 WL 34024762, at *1 (S.D. Ohio June 11, 1998) (ordering bifurcation of punitive damages based upon application of former § 2315.21(B)(1)). *See also* S.D. Ohio Civ. R. 7.2(a)(2) ("Failure to file a memorandum in opposition may be cause for the Court to grant any Motion, other than one which would result directly in entry of final

judgment or an award of attorney fees.”).

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE